

**AN ORDINANCE BY THE
COMMUNITY DEVELOPMENT/
HUMAN RESOURCES COMMITTEE**

05- 0-0500

AN ORDINANCE TO AMEND THE CONTRACT RENEWAL AGREEMENT FOR THE CHASTAIN PARK AMPHITHEATER TO SET INTERIM LIMITS ON SOUND LEVELS THAT MAY BE PRODUCED BY PERFORMERS DURING THE 2005 SEASON, AND TO AUTHORIZE THE RENEWAL OF THE AGREEMENT WITH ACENTECH, INC., TO ALLOW THE CONSULTANT TO TAKE CERTAIN MEASUREMENTS DURING THE 2005 SEASON TO EVALUATE THE EFFECTIVENESS OF THE INTERIM SOUND LEVEL LIMITS; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta ("City") owns a public entertainment facility located in Chastain Park, known as the Chastain Park Amphitheater ("Amphitheater"); and

WHEREAS, the Amphitheater is a limited-use facility located adjacent to a residential neighborhood ("Neighborhood"); and

WHEREAS, the City entered a contract in 1990 with a joint venture called Chastain Ventures ("Venture"), whereby the Venture manages and operates the Amphitheater; and

WHEREAS, the Venture is made up of the Atlanta Symphony Orchestra and Concert/Southern Promotions; and

WHEREAS, the 1990 contract between the City and the Venture was renewed in 2000 in a contract called the Renewal Agreement for the Chastain Park Amphitheater ("2000 Agreement"); and

WHEREAS, the Venture's operation of the Amphitheater, pursuant to the 2000 Agreement, includes, but is not limited to, use of the Amphitheater by the Atlanta Symphony Orchestra for performance of amplified concerts, either alone or with guest performers; use of the Amphitheater by Concert Southern Promotions to present amplified concerts; use of the Amphitheater by Al Haymon Concerts to present amplified concerts; use by the City to present amplified concerts; operation of ticket sales for performances; operation of concessions; and overall management of the Amphitheater; and

WHEREAS, some residents of the Neighborhood report that they hear and are disturbed by sound emanating from the Amphitheater during amplified concerts; and

WHEREAS, the City wants to improve the quality of life of its citizens; and

WHEREAS, the amplitude of low-frequency sounds determined to be an annoyance to the Neighborhood can be quantified by sound level measurements made in the 63 Hertz (Hz) octave band, as specified in ANSI S1.6-1984 (R1997), which encompasses only low-frequency sounds, and not sounds in the mid- and high-frequency range; and

WHEREAS, Acentech determined that a one-minute “energy equivalent level” (LEQ) allows the highest levels of the varying sounds produced during a concert event to be adequately characterized while allowing artists and their sound-board technicians adequate time to adjust levels that become too high; and

WHEREAS, Acentech determined that concert-related sound levels received in the Neighborhood can be directly correlated to concert-event sound levels measured at the light-tower booth at the rear of the Amphitheater; and

WHEREAS, Acentech’s goal was to set sound level limits that provide artists with an opportunity for artistic freedom and maintain the quality of sound for Amphitheater patrons, but that also protect Neighborhood residents from unreasonably loud sound emanating from the Amphitheater; and

WHEREAS, Acentech has recommended a two-tiered sound level limit, under which artists are never permitted to produce sounds that exceed a one-minute LEQ level of 95 dB in the 63 Hz octave band, or that exceed a cumulative total of more than ten one-minute LEQ levels of more than 90 dB in the 63 Hz octave band, during any concert event, as measured at the light-tower booth at the rear of the Amphitheater; and

WHEREAS, the current measurement system at the Amphitheater, the Grozier system, can be modified to measure the levels of sound in the 63 Hz octave band; and

WHEREAS, at the meeting wherein Acentech presented its recommendation to representatives of the Venture, the Neighborhood residents, and the City, representatives of both the Neighborhood and the Venture agreed that the City should implement the Acentech recommendation during the 2005 season, but requested that the recommendation be implemented for one year only so that both parties can evaluate the new maximum level. The Venture also requested that the sound measurements during the 2005 season be made from the back fence of the Amphitheater, in addition to measuring from the light-tower booth at the rear of the Amphitheater. Lastly, the parties suggested that they meet every six weeks during the 2005 season to discuss any concerns regarding the Amphitheater and to work cooperatively to resolve those concerns.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA AS FOLLOWS:

SECTION 1: The 2000 Agreement shall be amended (“Amendment”) to set an interim, two-tiered sound level limit, as follows: when measured from the light-tower booth at the rear of the Amphitheater, the one-minute LEQ levels during any concert event shall not exceed 95 dB in the 63 Hz octave band, nor shall an accumulated total of more than ten

(10) individual one-minute LEQ levels during any concert event exceed 90 dB in the 63 Hz octave band.

SECTION 2: The Amendment shall require that the fines and default schedule for the 2005 season be the same as for the 2001 season, as set forth in section 7(d) of the 2000 Agreement, except that the maximum sound levels at which a penalty is assessed shall be those levels set forth in Section 1 above. Specifically, the 2001 season fines, to be applied to the 2005 season, are \$100 for the first performance that violates the sound limits, \$200 for the second performance that violates the sound limits, and \$300 for all subsequent performances that violate the sound limits. In addition, where a Venture partner violates the sound limits in more than three concerts, the partner will not be deemed to be in default of the 2000 Agreement.

SECTION 3: City, Neighborhood, and Venture representatives shall meet every six weeks during the 2005 season to discuss any concerns about the 2005 Season, and shall cooperate in good faith in an attempt to resolve those concerns.

SECTION 4: The Venture shall have a microphone professionally installed in a location at the back fence of the Amphitheater that is relatively isolated from extraneous sounds. For data collection and informational purposes only, the City shall measure and record all noise levels at the rear fence microphone contemporaneously with its measurements at the light-tower booth.

SECTION 5: The City Attorney is hereby directed to prepare said Amendment to the 2000 Agreement for execution by the Mayor, to be approved as to form by the City Attorney.

SECTION 6: Said Amendment to the 2000 Agreement shall not become binding upon the City, and the City shall incur neither obligation nor liability thereunder, until the same has been signed by the Mayor and delivered to the Venture.

SECTION 7: The Mayor, on behalf of the City, shall be authorized to enter a renewal agreement with Acentech in an amount not to exceed \$60,000, whereby Acentech shall work with the owner of the Grozier system to modify the system in accordance with the new sound limits, and whereby Acentech shall perform measurements of a limited number of concerts during the 2005 season to determine the effectiveness of their recommendation, and whereby all costs associated therewith shall be charged to and paid from fund, account and center number 3P02 523001 N41S0613QNA0, the Chastain \$1.00 Surcharge Fund; and

SECTION 8: The City Attorney is hereby directed to prepare said Acentech renewal agreement for execution by the Mayor, to be approved as to form by the City Attorney.

SECTION 9: Said Acentech renewal agreement shall not become binding upon the City, and the City shall incur neither obligation nor liability thereunder, until the same has been signed by the Mayor and delivered to the Venture.

SECTION 10: All ordinances and parts of ordinances in conflict herewith are hereby repealed for purposes of the Ordinance only, and only to the extent of the conflict.